

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TIARA ENGLE and PORTNER)	CIVIL NO. 04-00256 SOM BMK
ORTHOPEDIC REHABILITATION,)	(Other Civil Action)
INCORPORATED,)	
)	DECLARATION OF SCOTT
Plaintiffs,)	KOSTYLO
)	
vs.)	
)	
LIBERTY MUTUAL FIRE)	
INSURANCE COMPANY; JOHN)	
DOES 1-10, JANE DOES 1-10; DOE)	
CORPORATIONS 1-10, DOE)	
PARTNERSHIPS 1-10, ROE "NON-)	
PROFIT" CORPORATIONS 1-10;)	
and ROE GOVERNMENTAL)	
ENTITIES 1-10,)	
)	
Defendants.)	
)	
)	
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)	
)	

DECLARATION OF SCOTT KOSTYLO

SCOTT KOSTYLO declares and states the following:

1. I am the Personal Market Claims Manager for Defendant Liberty Mutual Fire Insurance Company ("Liberty"). As a consequence of my position with Liberty, I have personal knowledge of the matters stated herein. I

submit this declaration in support of Defendant Liberty's Motion for Summary Judgment.

2. A review of Liberty records indicates that on, or shortly after May 2, 2003, Liberty was informed that a Liberty-insured vehicle had been involved in an automobile accident and that Plaintiff Tiara Engle ("Plaintiff Engle") was a passenger riding in the vehicle. Under the terms of the subject policy, Plaintiff Engle would have been entitled to Personal Injury Protection ("PIP") benefits up to policy limits, including the cost of medical treatment, for injuries related to the accident. Accordingly, by letter dated May 5, 2003, Liberty sent Plaintiff Engle a Hawaii PIP Application requesting her to complete and return the form. A copy of Liberty's May 5, 2003 letter (without enclosures) is submitted as Exhibit "A" with this Declaration.

3. Plaintiff Engle returned the executed application (copy submitted as Exhibit "B"). Thereafter, Liberty paid various providers for treatment of Plaintiff Engle through August 25, 2003, for soft tissue injuries arising from the May 2003 accident. Liberty paid a total of \$6,593.92 during this period, which included bills for Plaintiff Engle's emergency room treatment at Kaiser Hospital on the day of her accident as well as bills for massage and chiropractic treatments from Plaintiff Portner Orthopedic Rehabilitation, Inc. ("Plaintiff Portner Orthopedic").

4. Liberty undertook to investigate whether Plaintiff Engle's continuing treatment was appropriate, reasonable, necessary and causally related to the May 2003 accident. By letter dated November 10, 2003, Liberty retained orthopedic surgeon Clifford K.H. Lau to undertake a record review of Plaintiff Engle's medical condition to address whether Ms. Engle required further treatment, and, if so, what type, what frequency and for how long. A copy of Liberty's letter to Dr. Lau (without enclosures) is submitted as Exhibit "C" with this Declaration.

5. By letter dated November 18, 2003, Dr. Lau provided the results of his record review indicating he did not believe further treatment was necessary. Instead, Dr. Lau recommended a home exercise program for Plaintiff involving mainly abdominal strengthening exercises. A copy of Dr. Lau's report is submitted as Exhibit "D" with this Declaration.

6. Based on Dr. Lau's findings and recommendations, Liberty issued a Denial of Claim Form to Plaintiff Engle in care of her attorney, Roy K.S. Chang, Esq. on December 2, 2003, denying a claim for treatment on October 22, 2003) (Exhibit "E").

7. Plaintiff Engle continued to treat with Plaintiff Portner Orthopedic, as well as other providers, who continued to submit claims to Liberty. Liberty denied these subsequent PIP treatment claims and issued Claim Denial

Forms on December 2, 2003 (for treatments October 30, November 6, 8, 12, 15 and 20, 2003) (Exhibit “F”); December 12, 2003 (for treatments November 20 and 26, 2003) (Exhibit “G”); December 19, 2003 (for treatments December 4, 2003) (Exhibit “H”); December 31, 2004 (for treatment December 12, 2003) (Exhibit “I”); January 15, 2004 (for treatment December 17, 2003) (Exhibit “J”); and February 26, 2004 (for treatment November 13, 2004) (Exhibit “K”).

8. Exhibits “A”, “C” and “E” through “K”, submitted with this Declaration, are true and correct copies of documents made at or near the time so indicated on their face; kept in the course of Liberty’s regularly conducted business activities; and of a type and character that was Liberty’s regular practice to create when warranted by circumstances akin to those set forth in the preceding paragraphs.


9. Exhibits “B” and “D”, submitted with this Declaration, are true and correct copies of documents created by third parties and thereafter transmitted to Liberty, including a document prepared by Plaintiff Engle (Exhibit “B”), and Dr. Clifford Lau (Exhibit “D”). Following Liberty’s receipt of said documents, they were thereafter maintained by Liberty in the course of its regularly conducted business activities consistent with its custom and practice.

10. Each of the following Exhibits is a true and correct copy of the document maintained by Liberty:

<u>Exhibit</u>	<u>Description</u>
“A”	May 5, 2003 letter from Liberty to Plaintiff Engle requesting her to complete Hawaii PIP Application and Authorization Forms
“B”	PIP Application and Authorization Forms completed by Plaintiff Engle on May 15, 2003
“C”	Nov. 10, 2003 letter from Liberty to Dr. Clifford Lau requesting him to undertake a record review of Plaintiff Engle’s continuing treatment
“D”	Nov. 18, 2003 letter from Dr. Lau to Liberty providing the results of his record review
“E”	Dec. 2, 2003 Denial of Claim Form (for services on Oct. 22, 2003)
“F”	Dec. 2, 2003 Denial of Claim Form (for services Oct. 30, Nov. 6, 8, 12, 15 and 20, 2003)
“G”	Dec. 12, 2003 Denial of Claim Form (for services Nov. 20 and 26, 2003)
“H”	Dec. 19, 2003 Denial of Claim Form (for services Dec. 4, 2003)
“I”	Dec. 31, 2003 Denial of Claim Form (for services Dec. 12, 2003)
“J”	Jan. 15, 2004 Denial of Claim Form (for services Dec. 17 2003)
“K”	Feb. 26, 2004 Denial of Claim Form (for services provided by Yeoh & Muranaka on Nov.13, 2003)

I, Scott Kostylo, do declare under penalty of perjury that the foregoing statements are true and correct.

DATED: Honolulu, Hawaii Sept 12, 2006.


SCOTT KOSTYLO